CCRB INVESTIGATIVE RECOMMENDATION

Team: CCRB Case #: Force Discourt. U.S.								
Incident Date(s) Thursday, 06/04/2020 8:00 PM East 136 Street, between Brook Avenue and Brown Place Date/Time CV Reported CCV Reported At: How CV Reported: On-line website CCRB On-line website On-line websit	Investigator:		Team:	CCRB Case #:	Force	☐ Discourt.	U.S.	
Thursday, 06/04/2020 8:00 PM East 136 Street, between Brook Avenue and Brown Place On-line website Mon, 06/08/2020 7:58 PM CORPORTED Type Home Address Witness(es) Home Address Investigator Received at CCRB Mon, 06/08/2020 7:58 PM Witness(es) Investigator Received at CCRB Investigator Received at CRB Investigator Received at CR	Tessa Yesselman		Squad #4	202004142	✓ Abuse	O.L.	☐ Injury	
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Mon, 06/08/2020 7:58 PM Complainant/Victim Type Home Address Witness(es) Home Address Witness(es) Home Address Subject Officer(s) 1. SGT Kenneth Rice 04867 952164 1. EG BUR Witness Officer(s) Shield No Tax No Cmd Name 1. COD Terence Monahan 00000 876747 CD OFF 2. AC Kenneth Lehr 00000 891719 PBBX Officer(s) Allegation A.SGT Kenneth Rice Abuse: Sergeant Kenneth Rice detained (1700) A.SGT Kenneth Rice Abuse: Sergeant Kenneth Rice detained (1700) D.SGT Kenneth Rice Abuse: Sergeant Kenneth Rice detained (1700) Abuse: Sergeant Kenneth Rice detained (1700) D.SGT Kenneth Rice Abuse: Sergeant Kenneth Rice detained (1700)	Thursday, 06/04/2020 8:00 PM			en Brook Avenue	40	12/4/2021	5/4/2022	
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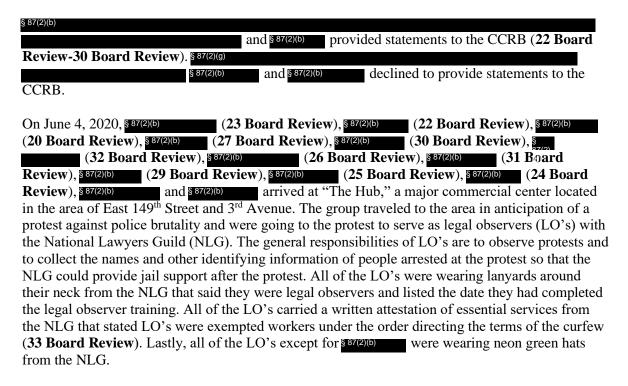
Officer(s)	Allegation	Investigator Recommendation		
J.SGT Kenneth Rice	Abuse: Sergeant Kenneth Rice detained §87(2)(b)			
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Case Summary

On June 8, 2020, Benjamin [\$87(2)(b)] filed this complaint with the CCRB via the CCRB website about the detainment of Legal Observers (LO's) from the National Lawyers Guild (NLG) at a protest against police brutality on June 4, 2020 (01 Board Review). [\$87(2)(b)] is a reporting non-witness. On June 16, 2020, the CCRB found a letter on the Twitter account of lawyer [\$87(2)(b)], condemning the targeting and detention of LO's during the June 4, 2020 protest in the Mott Haven neighborhood of the Bronx (06 Board Review). On June 17, 2020, CCRB contacted [\$87(2)(b)] to proceed with this case. On June 19, 2020, [\$87(2)(b)] communicated to the CCRB via email that he and attorneys [\$87(2)(b)] and were representing thirteen legal observers who had been detained during the
June 4, 2020, protest: §87(2)(b)
and § 87(2)(b)
On June 4, 2020, at approximately 8:00 PM, Sergeant Kenneth Rice of the NYPD Legal Bureau detained \$87(2)(b) Mx. \$87(2)(b)
and saf(2)(b) in the vicinity of East 136 Street, between Brook Avenue and Brown Place in the Bronx (Allegation A-L- Abuse of Authority: \$87(2)(9)
This case was originally assigned to Supervising Investigator Mac Muir and was reassigned to Supervising Investigator Tessa Yesselman.
This case was marked sensitive due to media coverage (03 Board Review-06 Board Review).
None of the above listed legal observers were arrested or issued summonses.
The CCRB received body worn camera footage (08 Board Review) and a video prepared by the Human Rights Watch of this incident (38 Board Review).
Findings and Recommendations
Allegation (A) Abuse of Authority: Sergeant Kenneth Rice detained \$87(2)(b) Allegation (B) Abuse of Authority: Sergeant Kenneth Rice detained \$87(2)(b) Allegation (C) Abuse of Authority: Sergeant Kenneth Rice detained \$87(2)(b) Allegation (D) Abuse of Authority: Sergeant Kenneth Rice detained \$87(2)(b) Allegation (E) Abuse of Authority: Sergeant Kenneth Rice detained \$87(2)(b) Allegation (F) Abuse of Authority: Sergeant Kenneth Rice detained \$87(2)(b) Allegation (G) Abuse of Authority: Sergeant Kenneth Rice detained \$87(2)(b) Allegation (I) Abuse of Authority: Sergeant Kenneth Rice detained \$87(2)(b) Allegation (J) Abuse of Authority: Sergeant Kenneth Rice detained \$87(2)(b) Allegation (K) Abuse of Authority: Sergeant Kenneth Rice detained \$87(2)(b) Allegation (K) Abuse of Authority: Sergeant Kenneth Rice detained \$87(2)(b) Allegation (L) Abuse of Authority: Sergeant Kenneth Rice detained \$87(2)(b) Allegation (L) Abuse of Authority: Sergeant Kenneth Rice detained \$87(2)(b)
and sar(2)(6) and sar(2)(6) provided written testimony to the CCRB detailing their experience on June 4, 2020 (Board Review 09-Board

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Review 20).



At approximately 7:20 PM, protesters began to march on 3rd Avenue. The LO's split into pairs and dispersed themselves among the crowd of protesters so that they could observe the march as it moved. On June 4, 2020, a citywide curfew was in effect from 8:00 PM through 5:00 AM. As it neared 8:00 PM, the protesters turned on to East 136th Street. The LO's observed that the police presence was growing larger and that a group of police officers wearing armor and riot gear had formed a line ahead of the group so that protesters could not pass by them, and that another line of officers was forming at the rear of the group, effectively blocking the protesters in between the two lines of officers. At or around 8:00 PM, an automated message began playing stating that the curfew started at 8:00 PM and anyone who remained in the area would be in violation of the curfew. Almost simultaneously, the two lines of police officers started to walk towards each other, closing in on the protesters, and the police started making large scale arrests. §87(2)(b) in zip ties and taken into custody as soon as the arrests began. The rest of the LO's set out to attempt to gather identifying information from as many people as possible who were in custody and, except for § 87(2)(b) were incrementally detained. Multiple LO's attempted to explain to the officers detaining them that they were exempt from the curfew and tried to show the officers the written attestation. None of the officers were responsive to these efforts.

AC Lehr (**37 Board Review**) stated that prior to responding to The Hub, he attended a muster meeting at the 40th Precinct station house. Also present at the meeting was Chief of Department Terence Monahan, SRG Chiefs Harry Wedin and John Dadamo, Inspector Gerard Dowling from SRG, Deputy Inspector Robert Gallitelli from the 40th Pct and his commanding officer Captain Isaac Soberal, Transit Chief Ed Delatorre, commanding officer from PSA 7 Deputy Inspector John Potkay, SRG Bikes captain Dave Miller, Chief Jesus Pintos from PBBX, Sgt. Kenneth Rice from NYPD Legal, Inspector Robert Rios from NYPD Intelligence, and various personnel from TARU. During the meeting, there was discussion about the 8:00 PM curfew, and discussion about how a reminder about the curfew would be made via Loud Range Acoustic Device (LRAD). There was discussion about essential workers, because of the finest message that exempted essential workers from the curfew. AC Lehr considered essential workers to be city, state, and federal employees, medical workers, and grocery store personnel. On duty EMT's would be exempt from the curfew

and would be allowed to render aid past the curfew. There was no discussion about legal observers and no discussion about potential arrests of legal observers or what to do if a legal observer was arrested and it was AC Lehr's belief that legal observers were not exempt from the curfew. The CCRB showed AC Lehr a document from the National Lawyers Guild called an Attestation of Essential Services (**33 Board Review**) and he stated that he had never seen the document before, including on location at the protest on June 4, 2020.

In the minutes leading up to 8:00 PM, the LRAD played a message advising protesters of the curfew and telling them to leave the area. The sidewalks were open to the protestors and, prior to 8:00 PM, they were not kept from leaving. At approximately 8:00 PM, AC Lehr was standing at East 136th Street between Brown and Brook Avenue and he made the decision that arrests should start. AC Lehr made this decision after considering the following: the violent history of the groups organizing the protest (FTP and Decolonize This Place); arrests were made prior to the protest of people intending to come to the protest with a gun, accelerant, and hammers; protest organizers had refused a dialogue with the police department prior to the protest; the event organizers openly advertised against the curfew; protestors held signs that said "F" the curfew; protestors yelled "F" the curfew; the LRAD warnings did not have the desired effect; and he was a mile away from The Hub which he was charged with protecting. AC Lehr was standing with Sgt. Rice, Chief Dadamo and Ins. Jerry Dowling from SRG when he made this decision. Sgt. Rice told AC Lehr that he had standing to start arrests. AC Lehr did not recall having any conversation with Sgt. Rice about arresting legal observers at this time.

Sgt. Rice (**36 Board Review**) stated that on the day of the protest, he was working as a police department attorney for the NYPD Legal Bureau. Sgt. Rice was tasked with providing legal advice to executive level officers and rank and file police officers. Sgt. Rice provided advice about any legal issue which arose during the protest and was not assigned to give advice about any one particular topic. Sgt. Rice's role was both proactive and reactive, in that prior to responding to the protest he spoke with executives, and at the protest he dispensed legal advice in real time. Because Sgt. Rice was acting as an attorney during this protest, his conversations with officers are protected under attorney-client privilege. Prior to going to the protest, Sgt. Rice met with high ranking officers at the 40th Precinct stationhouse. Sgt. Rice declined to say what was discussed and what, if any, advice he dispensed during this meeting because of the aforementioned attorney-client privilege. Sgt. Rice declined to say whether there was conversation about the possibility of effecting mass arrests at the protest, and if large scale arrests were made, what tactics would be used to affect them. Sgt. Rice declined to say whether there was any conversation about mass arrests regarding anticipated curfew violation because of attorney-client privilege.

On June 4, 2020, the mayor and the New York State Empire Development Corporation enacted a curfew which began at 8:00 PM and concluded at 5:00 AM. It was therefore the police departments legal position that the curfew came into effect at 8:00 PM and lasted until 5:00 AM, and that during these hours everyone who was on the street or otherwise in public that was not part of an exempted category would be in violation of the curfew. Exempted parties included essential workers, NYPD officers, FDNY employees, and EMT's. Sgt. Rice did not know every classification of person exempted from the curfew and stated that the executive order issued by the mayor listed all of them. Legal observers were not one of the groups exempt from the curfew. Sgt. Rice is familiar with legal observers and the National Lawyers Guild. Lawyers were also not exempt from curfew and had been advised to continue to offer their services remotely. Sgt. Rice was shown a document (33 Board Review) titled "Attestation of Essential Services." Sgt. Rice had not previously seen the document and did not know if legal observers were equipped with the document on June 4, 2020.

When Sgt. Rice initially arrived at the protest, he considered it to be a legal assembly because people are permitted to gather in public spaces. Once the protesters left The Hub, they began walking towards a NYCHA complex and people began to walk in the street. Sgt. Rice stopped thinking of the assembly as legal when protesters began walking in the street because the protesters were blocking vehicular traffic. Sgt. Rice did not know why officers did not arrest protesters when they began to walk in the street because he does not make operational decisions, he only advises officers about what they can do. Sgt. Rice declined to say if he participated in any conversation at this time about making mass arrests of protesters walking in the street because of attorney-client privilege. Sgt. Rice walked at the rear of the group of protesters. Beyond seeing protesters walking in the street, Sgt. Rice did not observe any other infractions as the group progressed from The Hub towards Brook Avenue.

The NYPD started making arrests just after 8:00 PM, when the curfew started. Sgt. Rice could not speak to the charges of the hundreds of people who were arrested, but once the department started making the arrests at the least, everyone was in violation of the curfew and walking in the street. Sgt. Rice remained at the rear of the group of protesters once the group reached the area of East 136th Street and Brook Avenue. Sgt. Rice was shown a video (38 Board Review) made by the Human Rights Watch entitled "US: New York Police Planned Assault on Bronx Protesters." Sgt. Rice recognized himself as the officer pictured at the 6:21 mark. At this point of the protest, protesters were being arrested for curfew violation. At 6:48, Sgt. Rice recognized himself as the officer approving the arrest of "green hats," in reference to legal observers. Sgt. Rice stated that at this point, he had observed officers attempting to bring a legal observer into custody and thought that the officers looked unsure of themselves, which made him think that the officers were unsure as to if they could arrest the legal observers. The officers were interacting with the legal observer near a parked car. Sgt. Rice did not know what lead up to the interaction and did not know who the officers were. After observing the interaction, Sgt. Rice said that legal observers could be arrested. Sgt. Rice explained that he did not issue a command that legal observers be arrested, but instead simply said that arresting them was permissible. As seen in the video, Sgt. Rice made this announcement loudly and to the group at large, and not towards a specific legal observer or police officer.

Chief Monahan (**35 Board Review**) stated that at some point during the morning on June 4, 2020, the NYPD's Intelligence (Intel) division internally distributed copies of flyers detailing the events planned to take place in Mott Haven that same evening. These flyers said, "Come out tonight to the Mott Haven neighborhood" with flame images and were generated by a group called "F12," which stands for "Fuck the Police." Chief Monahan was in touch with AC Lehr throughout the day because AC Lehr was the commanding officer in the Bronx. At some point on the afternoon of June 4, 2020, AC Lehr supervised a planning meeting at the 40th Precinct stationhouse, which Chief Monahan did not attend. Later that afternoon, Chief Monahan met with AC Lehr at the 40th Precinct stationhouse, and AC Lehr told Chief Monahan what his plans were for that evening, how many personnel he had, and that the situation was fluid because it was unknown how large the protest group would be. Chief Monahan was not involved in any decision-making regarding any preplanned force to be used against the Mott Haven protestors, including "compressing" or "packing" the protestors using physical force.

Chief Monahan stated that he was familiar with legal observers and the National Lawyers Guild. The NYPD Legal Bureau did not classify legal observers as essential workers under the Mayor's curfew. Chief Monahan was not aware of any conversation between the Mayor's Office and the NLG before the Mott Haven protest. Chief Monahan was not aware of a legal attestation that stated legal observers were exempted from the curfew. Chief Monahan did not believe that legal observers

are allowed to cross police lines, but believed that legal observers are allowed to take notes and gather the names of civilians who are detained and arrested.

Between 8:15 p.m. and 8:30 p.m., Chief Monahan arrived at East 135th Street and Brook Avenue in the Bronx to respond to a radio transmission that NYPD officers had "stopped" the protest group in that location. Chief Monahan did not know why the group was stopped in that area, and did not instruct any officer to stop the group in that area. Chief Monahan was not aware of any strategic or tactical reason why NYPD officers would have stopped the protest in that area. Protestors were already being placed into custody when he arrived. Chief Monahan was approached by a member of the Legal Aid Society to bring to his attention that multiple legal observers—who were identifiable by their green hats—were handcuffed. Chief Monahan stated that he never ordered the arrest of legal observers. Chief Monahan's understanding was that a Lieutenant from the NYPD Legal Bureau was the one who decided to arrest the legal observers. The investigation determined that the lieutenant referenced by Chief Monahan was Sgt. Rice. Chief Monahan was asked if he knew who Sgt. Rice was and responded that he did not. Chief Monahan stated that Sgt. Rice made the decision to arrest the legal observers because they were not considered essential workers under the curfew. Chief Monahan did not know if the legal observers were brought into police custody for any other reason besides violating the curfew.

At approximately 9:00 p.m., in the vicinity of East 136th Street and Brook Avenue in the Bronx, Chief Monahan told PO1, a Lieutenant on scene, that the handcuffed legal observers were to be released. A member of the NLG told Chief Monahan that not all the NLG legal observers on scene were wearing green hats, as they had run out of the green hats to distribute to the legal observers. Chief Monahan told the NLG member to identify to the Lieutenant which members of the handcuffed group were legal observers without green hats, and after doing so the remaining legal observers were released. Chief Monahan explained that he made the decision to release the legal observers based on his discretion and experience at past protests.

Assistant Deputy Commissioner of Legal Matters (ADCLM) Oleg Chernyavsky is a civilian member of the NYPD (**45 Board Review**). He has the equivalent rank of a two-star chief. In his role he supervises the NYPD criminal attorneys, including Sgt. Rice. ADCLM Chernyavsky stated that prior to June 4, 2020, there was a conversation within Legal Affairs about who was exempt from the curfew and who was not. ADCLM Chernyavsky did not recall the date of this conversation. ADCLM Chernyavsky was the ranking executive at the conversation. Also present were lawyers from the criminal unit because they are the personnel deployed to the events. ADCLM Chernyavsky did not recall if Sgt. Rice was present. The conversation was not specifically about legal observers, but legal observers were discussed. The conversation about legal observers was that they were not exempt from enforcement about the curfew.

The executive order putting the curfew in place exempted certain categories of people from enforcement. The exempted groups were primarily determined via guidance from the Empire State Development Corporation (ESDC) guidelines. The ESDC guidelines were put forth in April 2020 and were amended several times to determine what were essential businesses and who were essential workers. ESDC is a state entity and then Governor Cuomo used them to operationalize his statewide executive orders. The NYPD's approach to enforcing the curfew was shaped by the ESDC guidelines and the enforcement was dictated by who was considered exempt, with the understanding that enforcement could not be taken against people who were exempt. The ESDC guidance on exempt groups down into categories, including: healthcare, operations, infrastructure, manufacturing, retail, services, news media, financial institutions, professional services, and a host of other categories within each of those groups. "Professional services" in the guidance included legal services. The guidance says that lawyers were to work remotely and that any in person work

should be limited to in support of essential businesses and services. ADCLM Chernyavsky stated that protests aren't essential businesses or services. Not all legal observers are attorneys. If any of the legal observers at the event were attorneys, they met the first prong of eligibility, but were not there in support of essential businesses of services, so they did not meet the second prong for exemption. If a legal observer was not an attorney, they did not meet the first step of exemption eligibility.

ADCLM Chernyavsky did not recall if Sgt. Rice was present during the conversation. If Sgt. Rice was not present, he would have received this guidance via word of mouth. ADCLM Chernyavsky knew that Sgt. Rice received the information because he gave the correct advice at the June 4, 2020 protest, by advising that legal observers could be taken into custody. ADCLM Chernyavsky did not recall having any conversation with Sgt. Rice while Sgt. Rice was at the protest.

Prior to the June 4, 2020 protest, ADCLM Chernyavsky was not aware of communication from staff at the mayor's office saying that legal observers were exempt from the curfew. ADCLM Chernyavsky learned about the communication in the following days after the protest. ADCLM Chernyavsky stated that if he had been aware of the communication prior to the protest it would not have impacted his stance that legal observers were not exempt because it did not alter the guidance from ESDC. ADCLM Chernyavsky referenced EO 202.19, which was released by then Governor Cuomo on March 7, 2020, and prohibited local governments and departments of health from changing the guidance. If ADCLM Chernyavsky knew about the communication from the mayors office it could have impacted discretion, but it is ADCLM Chernyavsky's understanding that discretion was ultimately used at the scene because the legal observers were released.

On April 17, 2021, Governor Andrew Cuomo signed Executive Order 202-19 (**46 Board Review**), which says: "No local government or local department of health shall take any actions that could affect public health without consulting with the state department of health. No local government shall take any action that could impede or conflict with any government actions, or state actions, with respect to managing the COVID-19 public health emergency."

On June 1, 2020, Mayor DeBlasio instituted an 8:00 PM to 5:00 AM curfew (**44 Board Review**), with the following parties exempt: "police officers, peace officers, firefighters, first responders, emergency medical technicians, individuals travelling to and from essential work and performing essential work, people experiencing homelessness and without access to a viable shelter, and individuals seeking medical treatment or medical supplies."

On January 14, 2021, Attorney General of the State of New York Letitia James filed a lawsuit regarding the use of "brutal force and a pattern of false arrests stemming from peaceful protests since May 2020" against the City of New York, Mayor Bill de Blasio, Police Commissioner Dermot Shea, and Chief of Department Terence Monahan (34 Board Review). The suit defines legal observers as legal workers, law students, and lawyers trained by non-profit organizations to observe and document police responses to protests. The lawsuit also details how Mayor de Blasio's curfew orders exempted legal observers. On June 1, 2020, the Chief of Staff for Assemblyman Dan Quart, Amanda Wallwin, emailed the Chief of Staff for the Mayor's Office of State Legislative Affairs, Jenny Sobelman, to ask if there were plans to exempt legal observers from the curfew. On June 1, 2020, Ms. Sobelman responded to Ms. Wallwin's email and wrote that legal observers were to be exempt from the curfew. Persephone Tan, employed by the Mayor's Office of City Legislative Affairs, affirmed Ms. Sobelman's assertion that legal observers were exempt from the curfew, writing that legal observers were "as essential as it gets."

The CCRB obtained the above-mentioned emails by Ms. Wallwin, Ms. Sobelman, and Ms. Tan (33 Board Review). The CCRB also obtained a copy of the written attestation of Essential Services from the National Lawyers Guild that the legal observers were equipped with during the protest (33 Board Review). The attestation states: The Chief of Staff of Mayor De Blasio, Office of State Legislative Affairs, has confirmed in writing to the Chief of Staff of Assembly Member Dan Quart that volunteers providing 'jail, legal, and medical support,' including both lawyers and non-lawyers providing legal support to clients who have been arrested in connection with a protest, are exempted workers under the order directing the terms of the curfew."

§ 87(2)(g)				
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Civilian and Officer CCRB Histories

,	§ 87(2)(b)	
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	Sgt. Rice has been a member of service for nine years and has been a subject in one	
,	previous case with one allegation and no substantiations. § 87(2)(9)	

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- According to the Office of Court Administration (OCA), none of the civilians in this case have a history of criminal convictions in New York City (39 Board Review).
- On September 2, 2020, attorneys (37(2)(b)) and (37(2)(b)) filed notices of claim on behalf of (37(2)(b)) and (37(2)(b)) The claims allege: "the following damages, among others: Compensatory damages for past and/or future emotional and/or physical pain and suffering; compensatory damages for unlawful physical restraint and imprisonment; compensatory damages for violation(s) of Claimant's constitutional rights; compensatory damages for other economic damages; diverse general and special damages; and punitive damages, all in amounts to be determined by a jury. The claimants also demand that the City of New York, the NYPD, and their employees, agents, and representatives take immediate steps to preserve all documents, electronically stored information (including but not limited to all video footage and audio recordings relevant to

the claim, and all metadata associated therewith), and tangible things relevant to the claims or defenses relating to this matter... In the "Total Amount Claimed" field below, it says \$0.00. Claimant's damages are not zero, but the complaints clarify that the field in the automated would not permit an entry stating that the Claimant's damages will be determined by a jury (43 Board Review)."

Squad No.: <u>4</u>

Investigator: <u>Tessa Yesselman</u> <u>SI Tessa Yesselman</u> <u>12/03/2021</u>

Signature Print Title & Name Date

Squad Leader: Raquel Velasquez IM Raquel Velasquez 12/03/2021

Signature Print Title & Name Date

Reviewer:

Signature Print Title & Name Date